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Revised articles of draft uniform rules on the legal aspects of electronic data interchange (EDI) and related means of data communication

Note by the Secretariat

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INTRODUCTION

1. At its twenty-fifth session, in 1992, the Commission discussed the legal issues of electronic data interchange (EDI) and entrusted the preparation of legal rules on EDI to the Working Group on International Payments, which it renamed the Working Group on Electronic data Interchange. [1/]

2. The Working Group commenced this task at its twenty-fifth session by reviewing a number of legal issues set forth in a note prepared by the Secretariat (A/CN.9/WG.IV/WP.55). The Working Group agreed that it should proceed with its work on the assumption that the uniform rules should be prepared in the form of statutory rules. The Working Group deferred, however, a final decision as to the specific form that those statutory rules should take (A/CN.9/373, para. 34). At the conclusion of the session, the Working Group requested the Secretariat to prepare draft provisions, with possible variants based on the deliberations and decisions of the Working Group during the session, for its consideration at its next meeting (A/CN.9/373, para. 10).

3. At its twenty-sixth session, in 1993, the Commission considered the report of the Working Group on the work of its twenty-fifth session (A/CN.9/373). The Commission noted that the Working Group had started discussing the content of a uniform law on EDI and expressed the hope that the Working Group would proceed expeditiously with the preparation of that text. [2/]

4. At its twenty-sixth session, the Working Group considered a first draft of uniform rules on the legal aspects of electronic data interchange and related means of trade data communication prepared by the Secretariat (A/CN.9/WG.IV/WP.57) and a proposal made by the delegation of the United Kingdom of Great Britain and Northern Ireland (A/CN.9/WG.IV/WP.58). The Secretariat was requested to prepare a revised draft of the uniform rules on the basis of the deliberations and decisions of the Working Group (A/CN.9/387, para. 14).

5. The present note contains revised articles of the uniform rules. Additions and modifications to the text are indicated by underlining. It may be noted that, in line with the recent instructions relating to the stricter control and limitation of United Nations documentation, no explanatory remarks have been added to the draft provisions. General reference is therefore made to the relevant portions of the Working Group report (A/CN.9/387); additional explanations will be provided orally during the session of the Working Group.

1/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17 (A/47/17), paras. 140-148.

2/ Ibid., Forty-eighth Session, Supplement No. 17 (A/48/17), paras. 263-268.

DRAFT UNIFORM RULES ON THE LEGAL ASPECTS OF ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS OF DATA COMMUNICATION

CHAPTER I. GENERAL PROVISIONS*

Article 1. Sphere of application**

These Rules apply to [commercial and administrative] information in the form of a data [record] [message]. They do not apply to information in purely oral or purely [documentary] [written] form. Except as otherwise provided in these Rules, they do not apply to the substance of the information.

Footnote to Chapter I

* Variant A These Rules do not deal with issues related to the protection of consumers.

Variant B These Rules do not override any rule of law intended for the protection of consumers.

Variant C These Rules are not intended to apply to consumer transactions. They are subject to any rule of law intended for the protection of consumers.

Variant D These Rules do not apply to consumer transactions.

Footnote to article 1

** The Commission suggests the following text for States that might wish to limit the applicability of these Rules to international [data [records] [messages]]:

These Rules apply to a data [record] [message] as defined in article 2 where the [record] [message] relates to international trade interests.

References:

A/CN.9/387, paras. 15-28 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 1;
A/CN.9/373, paras. 21-26 and 29-33 (25th session, 1993);

A/CN.9/WG.IV/WP.55, paras. 7-20;
A/CN.9/360, paras. 29-31 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 25-33.

Article 2. Definitions

For the purposes of these Rules:

(a) "Data [record] [message]" means information created, stored or communicated by electronic, optical or analogous means including, but not limited to, electronic data interchange (EDI), telegramme, telex or telecopy;

(b) "Electronic data interchange (EDI)" means the computerized transmission of structured data between independent computer systems;

(c) "[Sender] [originator]" means any person other than one performing the function of an intermediary, on whose behalf a data [record] [message] covered by these Rules purports to have been created, stored or communicated;

(d) "Addressee" means any person other than one performing the function of an intermediary, who is intended ultimately to [receive] [be the end user of] a data [record] [message] covered by these Rules;

(e) "Intermediary" means any person who, as an ordinary part of its business, engages in receiving data [records] [messages] covered by these Rules and forwarding such data [records] [messages] to their addressees or to other intermediaries. [An intermediary may, in addition, perform such functions as, inter alia, formatting, translating, recording, preserving and storing data [records] [messages].]

[(f) "Record"

Variant A , in relation to any means by which information is preserved for subsequent reference, means the form in which such information is preserved.

Variant B means a representation of data that is susceptible of accurate reproduction at a later time.]

References:

A/CN.9/387, paras. 29-52 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 2;
A/CN.9/373, paras. 11-20, 26-28, and 35-36 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 23-26.

Article 3. Interpretation of the Uniform Rules

(1) In the interpretation of these Rules, regard is to be had to their international character and to the need to promote uniformity in their application and the observance of good faith [in international trade].

[(2) Questions concerning matters governed by these Rules which are not expressly settled in them are to be settled in conformity with the general principles on which these Rules are based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.]

References:

A/CN.9/387, paras. 53-58 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 3;
A/CN.9/373, paras. 38-42 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 30-31.

Article 4.

[deleted]

References:

A/CN.9/387, paras. 59-61 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 4;
A/CN.9/373, paras. 38-42 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 30-31.

[Article 5. Variation by agreement

Except as otherwise provided in these Rules, the rights and obligations of the [sender] [originator] and the addressee of a data [record] [message] arising out of these Rules may be varied by their agreement.]

References:

A/CN.9/387, paras. 62-65 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 5;
A/CN.9/373, para. 37 (25th session, 1993);

A/CN.9/WG.IV/WP.55, paras. 27-29.

CHAPTER II. FORM REQUIREMENTS

[Article 5 bis.

A data [record] [message] shall not be denied legal effectiveness, validity or enforceability on the grounds that the information it contains must be recorded in [written] [documentary] form or presented in its original form.]

Reference:

A/CN.9/387, paras. 93-94 (26th session, 1993).

Article 6. Functional equivalent of "writing"

(1) Variant A For the purpose of any rule of law, custom or practice which expressly or impliedly requires that certain information be recorded or presented in written form, or is predicated upon the existence of a writing, information in the form of a data [record] [message] complies with that requirement if

(a) the information can be reproduced in visible and intelligible [legible, interpretable] form; and

(b) the information is preserved as a record.

Variant B Where any rule of law, custom or practice expressly or impliedly requires information to be recorded or presented in writing, or provides for certain consequences if information is or is not recorded or presented in writing,

(a) any such requirement or condition as to recording in writing shall be satisfied if a record is created which enables the information in question to be subsequently displayed in a form which permits such reference as could have been made had the information been recorded in writing; and

(b) any such requirement or condition as to the presentation of information in writing shall be satisfied if the information in question is recorded in accordance with paragraph (a) above, and presented in a form in which it is displayed to the person to whom it is required to be presented, or immediately accessible to that person for the purpose of reference.

[(2) The provisions of this article do not apply to the following situations: [...].]

References:

A/CN.9/387, paras. 66-80 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 6;
A/CN.9/WG.IV/WP.58, annex;
A/CN.9/373, paras. 45-61 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 39-49;
A/CN.9/360, paras. 32-43 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 37-45;
A/CN.9/350, paras. 68-78;
A/CN.9/333, paras. 20-28.

Article 7. Functional equivalent of "signature"

(1) Where any rule of law, custom or practice expressly or impliedly requires information to be signed, any such requirement shall be satisfied if

[(a) a method [of authentication] indicating by whom the data [record] [message] was created and that that person approved the information contained therein has been agreed between the [sender] [originator] and the addressee of the data [record] [message] and that method has been used; or]

(b) a method [of authentication] is used to indicate by whom the data [record] [message] was created or communicated and that that person approved the information contained therein; and

(c) that method was as reliable as was [technically] appropriate to the purpose for which the data [record] [message] was created or communicated, in the light of all circumstances, including [any agreement between the [sender] [originator] and the addressee of the data [record] [message] and] any relevant commercial usage.

[(2) The provisions of this article do not apply to the following situations: [...].]

References:

A/CN.9/387, paras. 81-90 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 7;
A/CN.9/WG.IV/WP.58, annex;
A/CN.9/373, paras. 63-76 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 50-63;
A/CN.9/360, paras. 71-75 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 61-66;
A/CN.9/350, paras. 86-89;

A/CN.9/333, paras. 50-59;
A/CN.9/265, paras. 49-58.

Article 8. Functional equivalent of "original"

(1) Where any rule of law, custom or practice expressly or impliedly requires that certain information be presented in its original form, that requirement shall be fulfilled by the presentation of a data [record] [message] or in the form of a printout of such a data [record] [message] if

[(a) the [sender] [originator] and the addressee of the data [record] [message] have expressly agreed that the data [record] [message] should be regarded as equivalent to a paper original document; or]

Variant A (b) there exists reliable assurance as to the integrity of the information presented in the form of a data [record] [message].

Variant B (b) a method [of authentication] is used to ensure that the information presented has not been altered; and

(c) that method was as reliable as was [technically] appropriate to the purpose for which the data [record] [message] was created or communicated, in the light of all the circumstances, including [any agreement between the [sender] [originator] and the addressee of the data [record] [message] and] any relevant commercial usage.

[(2) The provisions of this article do not apply to the following situations: [...].]

References:

A/CN.9/387, paras. 91-97 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 8;
A/CN.9/WG.IV/WP.58, annex;
A/CN.9/373, paras. 77-91 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 64-70;
A/CN.9/360, paras. 60-70 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 56-60;
A/CN.9/350, paras. 84-85;
A/CN.9/265, paras. 43-48.

Article 9. Admissibility and evidential value of data [records] [messages]

(1) In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to prevent the admission of a data [record] [message] in evidence

(a) solely on the grounds that it is a data [record] [message]; or,

(b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, solely on the grounds that it is not an original document.

(2) Information presented in the form of a data [record] [message] shall be given due evidential weight. In assessing the evidential weight of a data [record] [message], regard shall be had to the reliability of the manner in which the data [record] [message] was created, stored or communicated and, where relevant, the reliability of the manner in which the information was authenticated.

References:

A/CN.9/387, paras. 98-109 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 9;
A/CN.9/WG.IV/WP.58, annex;
A/CN.9/373, paras. 97-102 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 71-81;
A/CN.9/360, paras. 44-59 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 46-55;
A/CN.9/350, paras. 79-83;
A/CN.9/333, paras. 29-41;
A/CN.9/265, paras. 27-48.

CHAPTER III. COMMUNICATION OF DATA [RECORDS] [MESSAGES]

Article 10. Effectiveness of data [records] [messages]

(1) A [sender] [originator] is deemed to have approved the content of a data [record] [message] [or an amendment or revocation of a data [record] [message]] if it was issued by the [sender] [originator] or by another person who had the authority to act on behalf of the [sender] [originator] in respect of that data [record] [message].

[(2) As between the [sender] [originator] and the addressee, a data [record] [message] is deemed to be that of the [sender] [originator] if the addressee properly applied a procedure previously agreed with the [sender] [originator] for verifying that the data [record] [message] was the data [record] [message] of the latter.]

[(3) A [sender] [originator] who is not deemed to have approved the data [record] [message] by virtue of paragraph (1) or (2) is deemed to have done so by virtue of this paragraph if:

(a) the data [record] [message] as received by the addressee resulted from the actions of a person whose relationship with the [sender] [originator] or with any agent of the [sender] [originator] enabled that person to gain access to the authentication procedure of the [sender] [originator]; or

(b) the addressee verified the authentication by a method which was reasonable in all the circumstances.]

[(4) The [sender] [originator] and the addressee of a data [record] [message] are permitted to agree that an addressee may be deemed to have approved the data [record] [message] although the authentication is not [commercially] reasonable in the circumstances.]

(5) Where a [sender] [originator] is deemed to have approved the content of a data [record] [message] under this article, it is deemed to have approved the content of the message as received by the addressee. However, where a data [record] [message] contains an error, or duplicates in error a previous [record] [message], the [sender] [originator] is not deemed to have approved the content of the data [record] [message] by virtue of this article in so far as the data [record] [message] was erroneous, if the addressee knew of the error or the error would have been apparent, had the addressee exercised reasonable care or used any agreed procedure of verification.

[Paragraph (5) applies to an error or discrepancy in an amendment or a revocation message as it applies to an error or discrepancy in a data [record] [message]].

[(6) The fact that a data [record] [message] is deemed to be effective as that of the [sender] [originator] does not impart legal significance to that data [record] [message].]

References:

A/CN.9/387, paras. 110-132 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 10;
A/CN.9/373, paras. 109-115 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 82-86.

Article 11. Acknowledgement of receipt

(1) Where, on or before sending a data [message], or by means of that data [message], the [sender] [originator] has requested an acknowledgement of receipt, but the [sender] [originator] has not requested that the acknowledgement be in a particular form, any request for an acknowledgement may be satisfied by any communication or conduct of the addressee sufficient to indicate to the [sender] [originator] that the message has been received.

(2) If, on or before transmitting a data message, or by means of that data message, the [sender] [originator] has requested an acknowledgement of receipt [and stated that the data message is to be of no effect until an acknowledgement is received], the addressee may not rely on the message, for any purpose for which it might otherwise seek to rely on it, until an acknowledgement has been received by the [sender] [originator].

(3) If the [sender] [originator] does not receive the acknowledgement of receipt within the time limit [agreed upon, requested or within reasonable time], it may, upon giving prompt notification to the addressee to that effect, treat the data message as though it had never been received.

(4) An acknowledgement of receipt, when received by the [sender] [originator], is [conclusive] [presumptive] evidence that the related data message has been received and, where confirmation of syntax has been required, that the data message was syntactically correct. Whether a functional acknowledgement has other legal effects is outside the purview of these Rules.

References:

A/CN.9/387, paras. 133-144 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 11;
A/CN.9/373, paras. 116-122 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 87-93;
A/CN.9/360, para. 125 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 80-81;
A/CN.9/350, para. 92;
A/CN.9/333, paras. 48-49.

Article 12. Formation of contracts

(1) In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data [records] [messages]. Where a contract is formed by means of data [records] [messages], it shall not be denied validity or enforceability on the sole ground that the contract was concluded by such means.

[(2) A contract concluded by means of data [records] [messages] is formed at the time when [, and at the place where] the data [record] [message] constituting acceptance of an offer is received by its addressee or deemed to be received under article 13.]

References:

A/CN.9/387, paras. 145-151 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 12;
A/CN.9/373, paras. 126-133 (25th session, 1993);

A/CN.9/WG.IV/WP.55, paras. 95-108;
A/CN.9/360, paras. 76-95 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 67-78;
A/CN.9/350, paras. 93-108;
A/CN.9/333, paras. 60-75.

Article 13. Time and place of receipt of a data [record] [message]

(1) Unless otherwise agreed between the [sender] [originator] and the addressee of a data [record] [message] and [unless otherwise provided by other applicable law], a data [record] [message] is deemed to be received by its addressee

(a) [subject to subparagraph (b) of this article,] at the time when the data [record] [message] enters the information system of, or designated by, the addressee in such a way that it can be retrieved by the addressee or when the data [record] [message] would have entered the information system and been capable of being retrieved if the information system of the addressee had been functioning properly,

[(b) if the data [record] [message] is in such a form that it requires translation, decoding or other processing in order to become intelligible by the addressee, at the time when such processing is completed or at the time when such processing could reasonably be expected to be completed.]

(2) Unless otherwise agreed between the [sender] [originator] and the addressee of a data [record] [message] and [unless otherwise provided by other applicable law], a data [record] [message] is deemed to be received by its addressee at the place where the addressee has its place of business; where the addressee has more than one place of business, the data [record] [message] is deemed to be received at the place of business with the closest relationship to the content of the data [record] [message].

References:

A/CN.9/387, paras. 152-163 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 13;
A/CN.9/373, paras. 134-146 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 95-108;
A/CN.9/360, paras. 76-95 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 67-78;
A/CN.9/350, paras. 93-108;
A/CN.9/333, paras. 60-75.

Article 14. Storage of data [records] [messages]

(1) Where it is required by law that certain information be retained as a record, that requirement shall be satisfied if the information is kept in the form of data [records] [messages] provided that the requirements contained in paragraphs (2) and (3) of this article are satisfied.

[(2) Data [records] [messages] shall be stored unaltered by the [sender] [originator] in the transmitted format and by the addressee in the format in which they are received.]

[(3) Data [records] [messages] shall be kept readily accessible and shall be capable of being reproduced in a human readable form and, if required, of being printed. Any operational equipment required in this connection shall be made available by the person storing information in the form of data [records] [messages].

References:

A/CN.9/387, paras. 164-168 (26th session, 1993);
A/CN.9/WG.IV/WP.57, article 14;
A/CN.9/373, para. 123-125 (25th session, 1993);
A/CN.9/WG.IV/WP.55, para. 94.

[Article 15. Liability

(1) Each party shall be liable for damage arising directly from failure to observe any of the provisions of the uniform rules except in the event where the party is prevented from so doing by any circumstances which constitute an impediment beyond that party's control and which could not reasonably be expected to be taken into account at the time when that party engaged in sending and receiving data [records] [messages] or the consequences of which could not be avoided or overcome.

(2) If a party engages any intermediary to perform such services as the transmission, logging or processing of a data [record] [message], the party who engages such intermediary shall be liable for damage arising directly from that intermediary's acts, failures or omissions in the provision of the said services.

(3) If a party requires another party to use the services of an intermediary to perform the transmission, logging or processing of a data [record] [message], the party who requires such use shall be liable to the other party for damage arising directly from that intermediary's acts, failures or omissions in the provision of the said services.]

References:

A/CN.9/387, paras. 169-176 (26th session, 1993);

A/CN.9/WG.IV/WP.57, article 15;
A/CN.9/373, paras. 148-152 (25th session, 1993);
A/CN.9/WG.IV/WP.55, paras. 114-123;
A/CN.9/360, paras. 97-103 (24th session, 1992);
A/CN.9/WG.IV/WP.53, paras. 82-83;
A/CN.9/350, paras. 101-103;
A/CN.9/333, para. 76.